

ANNEX B

Proposed Changes to Companion Policy 91-101 *Derivatives: Product Determination*

1. *Companion Policy 91-101 Derivatives: Product Determination is changed by this Instrument.*

2. *Section 1 is changed by inserting the following subsection:*

(4) Section 1(4) establishes a common definition of “derivative” in British Columbia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Yukon that is exclusive of the definition of “security” in the securities legislation of those jurisdictions for the purposes of the Instrument..

2. *Paragraph 2(1)(d) is changed by replacing the first sentence after the underlined subheading “Settlement by delivery except where impossible or commercially unreasonable (subparagraph 2(1)(d)(ii))” with the following:*

Subparagraph 2(1)(d)(ii) requires that, to be excluded from the definition of “specified derivative”, a contract must not, other than as described above under subparagraph 2(1)(d)(i), permit cash settlement in place of delivery unless physical settlement is rendered impossible or commercially unreasonable as a result of an intervening event or occurrence not reasonably within the control of the counterparties, their affiliates or their agents..

3. *Paragraph 2(1)(h) is replaced with the following:*

(h) Securities in New Brunswick, Nova Scotia and Saskatchewan and (h.1) Securities in Alberta

Some types of contracts traded over-the-counter, including some types of foreign exchange contracts and contracts for difference, meet the definition of “derivative” (because their market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest) in the securities legislation of the local jurisdiction, but also meet the definition of “security” (because they are investment contracts or options) in the securities legislation of the local jurisdiction.

In New Brunswick, Nova Scotia and Saskatchewan, these contracts would meet the definition of “security” (because they are investment contracts) but for the exclusion of derivatives from the definition of “security”. Paragraph 2(1)(h) provides that, in New Brunswick, Nova Scotia and Saskatchewan, these contracts are not excluded from the definition of “specified derivative”; as a result, these contracts are subject to certain requirements relating to OTC derivatives.

In Alberta, these contracts would meet the definition of “derivative” and the definition of “security” (because they are investment contracts or options). Paragraph 2(1)(h.1) provides that, in Alberta, these contracts are not excluded from the definition of “specified derivative”; as a result, these contracts are subject to certain requirements relating to OTC derivatives..=

4. *The heading to paragraph 2(1)(i) is changed by adding “Alberta” before “British Columbia”.*
5. *The Policy is changed by deleting the guidance under the heading “Investment contracts and options, stock options, warrants and similar instruments in Alberta”.*
6. These changes become effective on September 30, 2016.